

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AND
IN ITS GENERAL AND INHERENT JURISDICTION

INDIAN ADOPTION PETITION NO. 57 OF 2023
WITH
JUDGES ORDER NO. 93 OF 2023
IN
INDIAN ADOPTION PETITION NO. 57 OF 2023

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Family Service Centre ... Petitioner

V/s.

Santosh M. & Kavya H. ... Prospective
(Prospective Adoptive Parents) Adoptive Parents
and Nihal S., Minor)

Mr. Rakesh K.L. Kapoor i/b Ms. Rakesh K.L. Kapoor & Co., Advocate
for the Petitioner.

Mr. O. Hareendran, Scrutiny Officer, ICSW present.

Mr. Dilip S. Gurav, Chamber Registrar present.

CORAM : R.I. CHAGLA, J.
(IN CHAMBER).

DATE : 21ST DECEMBER, 2023.

PC:

1. By this Indian Adoption Petition, the Petitioners and Proposed Adoptive Parents have sought for adoption of the male minor Nihal (“**the said male minor**”). The said male minor Nihal was born on 23rd January 2023. The birth mother surrendered her child before the

Child Welfare Committee (CWC), Mumbai City-I on 31st January, 2023 and the child's safe custody was given to the Petitioner institution on the same day. On 1st February 2023 through its order, the CWC, Mumbai City-I recognized that admission under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 ("the said Act"). The Custody Order of CWC is on record at page No. 22, to the Petition.

2. After making due inquiry under section 38 of the said Act, the CWC, Mumbai City II declared the said male minor Nihal, **"Legally Free for Adoption" on 5th April 2023.** The Free for adoption Certificate is on record at page No. 21, to the Petition.

3. The Prospective Adoptive Parents are residing at Bengaluru, Karnataka aged about 44 and 35 years respectively. They have been married for the past 15 years (30/11/2008) with no biological children.

4. Motivation letter from the Prospective Adoptive Parents is on record at page Nos. 32-33, to the Petition.

5. Affidavit by the Chief Functionary of the Specialized Adoption Agency (Petitioner) in support of the adoption of the said male minor Nihal, is on record at page Nos. 103-107, to the Petition.

6. The Minutes of Adoption Committee Meeting dated 05/06/2023 is on record at page Nos. 19-20, to the Petition and it

states that the prospective adoptive parents are suitable to adopt the said male minor child.

7. The Health report dated 2nd June 2023 of the Prospective Adoptive Parents states that they are medically fit. Their HIV and HBsAg test reports certify the case as Non Reactive. These reports are on record at page Nos. 26-31, to the Petition.

8. The Prospective Adoptive father is self-employed as Partner of the firm “Shree Devi Silks” at Bangalore since 2015 and his annual income for the Assessment year 2022-23 is Rs. 10,12,360/-. His Income Affidavit and Income Tax Updated Returns Acknowledgment are on record at page Nos. 43-55, to the Petition. The Prospective Adoptive Mother is a Homemaker.

9. Proof of residence, Pan Card copies and supportive financial documents are on record at page Nos. 34-38 &56-62, to the Petition.

10. The home study report Part I: Self Assessment by the Prospective Adoptive Parents is on record at pages 63-68, to the Petition.

11. The Home Study Report part II: Assessment report dated 24th April 2023 by the Social Worker of Specialized Adoption Agency, “Shishu Mandir Children’s Home”, Bengaluru is on record and the report has found the Prospective Adoptive Parents suitable for adopting

a child. The said report can be found at page Nos. 69-73, to the Petition.

12. The child security undertaking dated 12th June 2023 given by the Prospective Adoptive Mother's brother and sister-in-law residing at Bengaluru to look after the said male minor in case of any mishap to the Prospective Adoptive Parents is on record at page 85-88, to the Petition.

13. Medical Examination Report dated 29th April 2023 of the said male minor child, is on record at pages 93-98 to the Petition and it states "Health Status: Normal. Overall Observation of the child: Healthy and Happy". The Proposed Adopters have countersigned the said report.

14. The HIV report of the said male minor dated 18th April 2023 certifies the case as Non Reactive. The said report is on record at page No. 101, to the Petition. Post Card Size Photograph of the said male minor is on record at page No. 102, to the Petition.

15. The Declaration of consent and undertaking by the Prospective Adoptive Parents states that they are willing to be appointed and declared Adoptive Parents of the said male minor Nihal. This declaration is on record at page Nos. 39-40, to the Petition

16. The Pre-adoption foster care undertaking dated 12th June 2023 is on record at page Nos. 41-42, to the Petition.

17. As regards the change of name, the Prospective Adoptive Parents desire that the said male minor 'Nihal,' be renamed as "Nihal S.".

18. Undertaking dated 08th June 2023 given by the authorities of "Shishu Mandir Children's Home", Bengaluru for furnishing post adoption follow-up reports is on record at page No. 108, to the Petition.

19. The Petitioner institution's recognition from the Women & Child Development, Maharashtra State to place children in adoption is valid up to 05th May 2025.

20. Mr. O. Hareendran, Scrutiny Officer has tendered Report / Representation from the Indian Council of Social Welfare (ICSW) dated 25th November 2023, which is taken on record and marked 'X' for identification.

21. Having considered the material on record as well as the Report of the Scrutiny Officer dated 25th November 2023 marked 'X', in my view, it would be in the interest of the said male minor if he is adopted by the Proposed Adoptive Parents.

22. It is relevant to note here that in the case of *Nisha Pradeep Pandya alias Nisha Amit Gor and Anr. Vs. Union of India and Ors.*,¹

¹ Writ Petition No.1085/2023 (Writ Petition (L) No.32065/2022)

concerning challenge raised to the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, the Division Bench of this Court on 10th January, 2023 passed an interim order. The relevant portion of said order of Division Bench reads as follows :

“8. In the meantime, there will be an ad-interim order only until the next date in terms of prayer clauses (d), (e) and (f) of the petition which reads as follows:

(d) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to stay the effect, implementation and purport of the letter dated 30th September, 2022 issued by Respondent No.2;

(e) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Respondents not to transfer pending adoption matters before the District Magistrates for adjudication.

(f) Pending the final hearing and disposal of the present Petition, the Hon’ble Court may be pleased to direct the Hon’ble Courts to continue with the adjudication of the adoption matters that are pending on their record and file.

9. Additionally, the safer and more prudent course of action would be to allow all matters to be placed before the learned Single Judge of this Court who is assigned those matters. Those orders may be continued to be passed until the challenge is finally decided.”

23. Hence, it is clear that this Court can consider and dispose of the present Petition.

24. In these circumstances, the Petition is allowed in terms of prayer clauses (a) to (d) of the Petition, which read thus:-

“(a) That the Prospective Adoptive Parents be given the said child in Adoption and be declared as parents having all parental legal rights, Privileges and responsibilities over the said minor Nihal S.

(b) That the Prospective Adoptive Parents may be granted leave to remove the said minor from the jurisdiction of this Hon’ble Court and to take the said minor out of the jurisdiction of this Hon’ble Court whenever required.

(c) That the concerned Municipal Authority/Birth Certificate issuing Authority may be directed to issue Birth Certificate in the name of the said male minor Nihal S. born on 23/01/2023 and stating thereon that the Prospective Adoptive Parents are the Parents of the said minor.

(d) That the Prospective Adoptive Parents be allowed to change the name of the minor from ‘Nihal’ to Nihal S.” born on 23/01/2023.

25. The Judge’s Order is also separately signed.

26. In the Judge’s Order there is an undertaking of the Adoptive Parents to invest an amount of Rs.1,00,000/- (Rupees One Lakh only) in the name of Adopted Child in any Nationalized Bank.

They also undertake not to withdraw this investment till the Adopted Child attains majority. They have agreed to handover the investment receipt to the Adopted Child on his becoming a major. This undertaking is accepted as an undertaking to this Court.

27. The present Indian Adoption Petition is accordingly, disposed of.

(R.I. CHAGLA, J)